

AMENDATORY SECTION:

April 2004, Study Session

WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services -- Credit prohibited -- Exceptions. The use of credit in the sale of gambling equipment, devices, related supplies or paraphernalia, and services is prohibited. Merchandise to be used as a punch board or pull-tab prize may be sold on credit. Except as authorized by this section, all sales of such shall be transacted on a cash basis. The following definitions, restrictions, and procedures apply to this section:

- (1) All licensed manufacturers and distributors may sell gambling equipment such as dispensers, bingo blowers, roulette wheels, etc., and gambling-related support equipment through capital lease agreements or other financing arrangements to operators subject to the following conditions and requirements:
 - (a) The cost of a single item, or group of similar and related items included in the sale, exceeds one thousand dollars;
 - (b) The term of the contract does not exceed forty-eight months;
 - (c) All terms of the contract are in writing and copies of such agreements are provided to the commission within thirty days of execution;
 - (d) The manufacturer or distributor retains only a security interest in the item sold and cannot obtain any ownership interest in the licensee, or exercise any control over the use of the item in the licensed activity;
 - (e) The amount of payments is not based on the size or level of gambling activity and is determined by use of a standard amortization schedule for the term and stated interest rate;
 - (f) The interest rate charged by the contract is set at the time of sale and does not vary during the term of the contract; and
 - (g) The contract does not require the purchaser to directly or indirectly purchase any other products or services from the seller.

Definitions.

- (2) The following definitions only apply to subsections (3) through (9) of this section:
 - (a) **"Manufacturers and distributors"** refers only to the manufacturers and distributors of pull-tabs, punch boards, and bingo supplies.
 - (b) A **"cash basis"** means full payment is received by the seller on or before actual delivery of the product or service to the purchaser;
 - (c) A **"trade account"** is a payment system that allows distributors to place orders for inventory or services from manufacturers or distributors and to make payment for such within a specific period of time after shipment of the product or completion of the service;
 - (d) **"Prescribed time period"** is the maximum period of time a distributor has to pay for purchases of goods or services made under trade account terms prior to being restricted to cash basis terms. The time period begins when a product is shipped or service completed and ends on the date payment is actually delivered to the manufacturer or distributor, or if delivered by the U.S. mail, the U.S. postmark date of the envelope containing the payment. For purposes of this section, prescribed time period means no later than sixty days after shipment of the products or completion of the services.

Authorized transactions.

(3) For purposes of this WAC title, the following transactions are authorized and shall not be deemed as credit or loans of money when applicable requirements are met:

- (a) Purchases of goods and services from manufacturers or distributors when paid for by checks that meet the requirements of WAC 230-12-350;
- (b) Purchases of goods or services by distributors from manufacturers or other distributors when utilizing trade account terms and the requirements of subsection (4) of this section are followed;
- (c) Promissory notes between manufacturers and distributors for payment of debts incurred prior to the effective date of this section;
- (d) Purchases made under capital lease agreements when the requirements of this section are followed;
- (e) All transactions between manufacturers or distributors and tribal governments or companies certified to manage class III gambling activities operated under a tribal/state compact are exempt from all provisions of this section;
- (f) Charitable or nonprofit organizations licensed to conduct bingo may purchase bingo cards and bingo supplies from distributors and/or manufacturers and receive such without making immediate payment if payment is made, by check or cash, no later than thirty days after delivery of the product. If the distributor or manufacturer does not receive payment within thirty days, they must immediately restrict the licensee to sales on a cash on delivery basis until payment is received. Licensees paying for bingo supplies on terms other than a cash basis must document on the purchase invoice the date paid and the check number; ~~and~~
- (g) The sales of nongambling equipment, fixtures, supplies, or commodities to licensees are exempt from all provisions of this section when the requirements of WAC 230-12-330 (6) are met; and

Trade account conditions.

(4) Manufacturers and distributors may allow distributors to establish "trade accounts" to purchase gambling-related inventory or services without making immediate payment under the following conditions:

- (a) Trade account terms, if offered to any distributor, shall be made available to all distributors without discrimination: Provided, That trade accounts may be restricted to distributors that:
 - (i) Meet objective credit criterion established by a manufacturer or distributor. Such criterion must be in writing, available to the commission for review, and provided to any distributor upon request. A manufacturer or distributor may include a distributor's payment history as a part of the trade account approval criterion;
 - (ii) Meet minimum purchase requirements established by the manufacturer: Provided, That the minimum purchase requirement shall not be greater than five hundred dollars per transaction;
- (b) Trade account terms shall not allow a manufacturer or distributor to gain any ownership or financial interest in a licensee. This section is not intended to prohibit or restrict a manufacturer or distributor from gaining a security interest in inventory sold for credit, as authorized by the Uniform Commercial Code: Provided, That this section shall not allow a manufacturer to obtain an interest in inventory sold by any other manufacturer under trade account terms;
- (c) A distributor shall make full payment for all goods or services purchased under trade account terms within

the prescribed time period. Failure to pay within the prescribed time period may be deemed solicitation of credit by the distributor.

Procedures for past due accounts - notification and sales restrictions.

(5) When a distributor fails to pay for goods or services purchased under trade account terms within the prescribed time period, the creditor manufacturer or distributor shall comply with the procedures set forth below. Failure to comply with these procedures may result in the manufacturer or distributor being deemed to have extended credit to the distributor. The following procedures must be followed when a distributor fails to make required payments:

(a) Notify the delinquent distributor of failure to pay by telephone no later than the end of the next business day;

(b) Restrict sales of all goods and services to the delinquent distributor no later than the end of the third business day after the default: Provided, That sales may be made to a delinquent distributor on a cash basis only;

(c) Notify the commission and all licensed manufacturers and distributors in writing by letter, facsimile or e-mail no later than the end of the fifth business day after default. Written notification shall include at least the following:

(i) The distributor's name;

(ii) The invoice or shipping order numbers involved in the transaction;

(iii) The date the item was shipped or service was provided; and

(iv) Any other information requested by the commission.

Cash only sales to delinquent distributors.

(6) Upon receipt of notification from the manufacturer that a distributor has a delinquent account, manufacturers and distributors shall immediately cease sales, shipments of products, and providing services to the delinquent distributor on other than a cash basis.

Notification of payment on past due accounts.

(7) **The manufacturer** shall notify the commission and all manufacturers and distributors in writing by letter, facsimile or e-mail, no later than the next business day after receiving payment from the delinquent distributor for the outstanding account. Trade account sales may then resume with all manufacturers.

(8) **The distributor** that was placed on a credit hold shall notify the commission in writing by letter, facsimile or e-mail, no later than the next business day after payment has been made to the manufacturer in which they were delinquent.

Failure to pay promissory notes.

(9) A creditor manufacturer or distributor shall immediately notify the commission if a distributor fails to abide by the terms of the promissory note and the process being pursued to correct the situation.